Sarkar on Evidence, on page 916, that this section is an exception to the general rule laid down in section 101 that the burden of proving facts rests on the party who substantially asserts the affirmative of the issue. It is not intended to relieve any person of that duty or burden. Bowen L. J. in *Abrath* v. *The North Eastern Railway Company, supra*, said of this exception to the general rule at page 457 in these words:

"It has been said that an exception exists in those cases where the facts lie peculiarly within the knowledge of the opposite party. The counsel for the plaintiff have not gone the length of contending that in all those cases the onus shifts, and that the person within whose knowledge the truth peculiarly lies is bound to prove or disprove the matter in dispute. I think a proposition of that kind cannot be maintained, and that the exceptions supposed to be found amongst cases relating to the game laws may be explained on special grounds."

This passage of the judgment is discussed in *Sarkar* on Evidence on pages 916 and 917 along with other decisions on the same point and it is there said that the authorities do not appear to be agreed as to the extent of the general rule that where a particular fact is peculiarly within the knowledge of the opposite party, the burden of proving it lies on him. But *Sarkar* seems to be of the view that the most practical and reasonable way of applying section 106 is to adopt the words in *Phipson*, 8th Edition, page 34, which are as follows:

"in the absence of statutory provision, the better opinion now seems to be that, in general, some *prima facie* evidence must be given by the complainant in order to cast the burden on his adversary."

These words were apparently followed in the local case of *Khoo Teck Yam* v. *Public Prosecutor*.(4)

In the result I would uphold the conclusion of the learned trial judge and dismiss this appeal with costs.

Appeal allowed. New trial ordered.

Solicitors: *Lim Cheng Ean & Co.; Nath & Co.*

PENINSULAR LAND DEVELOPMENT SDN. BHD. v. K. AHMAD

[F.C. (Azmi L.P., Suffian & Ali F.JJ.) October 31, 1969]

[Penang — Federal Court Civil Appeal No. X. 47 of 1969]

Practice and Procedure — Action for specific performance of contract of sale — Application for summary judgment — Whether defendant had good defence on merits — Whether agreement of sale severable from building agreement — Construction contra proferentum — R.S.C. 1957, O. 14A.

The parties in this case had entered into two agreements, one an agreement for the sale of a piece of land and the other a building agreement under which the appellant company agreed to build a dwelling house on the said piece of land. The respondent had paid all the instalments on the sale agreement and all the instalments but two on the building agreement. The appellant company was unable owing to difficulties with its building contractor to complete the building. The respondent applied for specific performance of the agreement for sale. On an application for summary judgment the learned trial judge made an order in terms of the statement of claim as he took the view that the two agreements were distinct and severable and he declined to accept the appellant's contention that there was a triable issue or that there was a difficult question of construction involved. On appeal it was contended that the appellant had a good defence to the action on the merits. It was argued that the learned trial judge was wrong in holding that the two agreements were distinct and severable and that the appellant was entitled to show that the agreement for sale could not be completed independently of the building agreement.

Held (Ali F. J. dissenting), dismissing the appeal: on the admitted facts there was no triable issue and the learned trial judge was right in holding that the agreements were distinct and severable and in granting the plaintiff-respondent leave to sign final judgment.

Cases referred to:-

(1) *Saw* v. *Hakim* 5 T.L.R. 72.

(2) *Ironclad etc. Co.* v. *Gardner* 4 T.L.R. 18.

(3) *Bachan Singh* v. *Mahinder Kaur* [1956] M.L.J. 97 & 98.

(4) *Lysaght* v. *Edwards* [1876] 2 Ch. D. 499.

(5) *Haji Osman bin Abu Bakar* v. *Saiyed Noor bin Saiyed Mohamed* [1952] M.L.J. 37.

(6) *Symons* v. *James* (1842) 62 E.R. 983.

(7) *Barrett* v. *The Duke of Bedford* (1800) 101 E.R. 1569.

(8) *Edis* v. *Bury* (1827) 108 E.R. 511.

(9) *Jacobs* v. *Booths Distillery* (1901) 85 L.T.R. N.S. 262.

The following authorities were also cited: *Manks* v. *Whitley* [1912] 1 Ch. 735, 754; *Cow* v. *Cassey* [1949] 1 K.B. 474, 481; *Reigate* v. *Union Manufacturing Co.* [1918] 1 K.B. 605; 17 *E. & E. Digest* 298, para. 1033 *contra proferentum* 1035; *Dane* v. *Mortgage Insurance Corporation* [1894] 1 Q.B. 54; *Nassau* 70 L.T.R. 376; *Anglo-Italian Bank* v. *Wells* (1878) 38 L.T.R. 197; *Hobson* v. *Monks* [1884] W.N. 8; *Smith* v. *Chadwick* (1881-82) 20 Ch. D. 27, 62; *Odessa Tramways Co.* v. *Mendel* (1878) 8 Ch. D. 235, 244; *Sir Lindsay Perkinson & Co. Ltd.* v. *Commissioners of His Majesty's Works and Public Buildings* [1949] 2 K.B. 632; 665; [1950] 1 All E.R. 208, 228; *Metropolitan Water Board* v. *Dick Kerr & Co. Ltd.* [1918] A.C. 119; *Codd* v. *Delap* (1905) 92 L.T. 510 511; *Bowes* v. *Caustic Soda & Chlorine Syndicate* (1892-93) 9 T.L.R. 328; *Electric & General Contract Corporation* v. *Thomas Henston Electric Co.* (1893-94) 10 T.L.R. 103; *Perak Iron Mining Co. Ltd.* v. *Chong Voon Kim* [1962] M.L.J. 270; *Thorne* v. *Seel* [1878] W.N. 215; *Luen Heng & Co.* v. *Oakes* [1966] 1 M.L.J. 14; *Heng Weng Kong* v. *Nabishah* [1966] 2 M.L.J. 115; *Town House Hotel Ltd.* v. *Shanghai Hall Ltd.* [1966] 2 M.L.J. 169; [1967] 1 M.L.J. 223; *Roberts* v. *Plant* (1885) 1 Q.B.D. 597; *Sharikat Bakti Ltd.* v. *Gurbachan Singh* [1966] 2 M.L.J. 269, [1967] 1 M.L.J. 235; *Hajara Singh* v. *Muthukaruppan Chettiar* [1967] 1 M.L.J. 167; *Kok Swee Teng & Anor.* v. *Perola Navigation Trading Co. Ltd.* [1969] 1 M.L.J. 95.

FEDERAL COURT.

R. C. Hoffman (*Dr. Ahmad Ibrahim* with him) for the appellant.

P. J. Mooney for the respondent.

Cur. Adv. Vult.

Azmi L.P.: The two parties executed two agreements which may be referred to respectively as the "sale agreement" and the "building agreement". Under the sale agreement the defendant, a developing company agreed to sell a plot of land to the plaintiff for $30,000 payable in instalments which at the date of the suit, had been paid in full. Under the building agreement the defendant agreed to build a dwelling house on the said land for $49,000 payable in six progress payments, each to be made when demanded by the defendant. No time was fixed for the erection of the house because clause 3 of the building agreement pro-

vides that "The company (i.e. the defendant) shall complete the erection of the said dwelling house as soon as possible."

At the date of the suit the plaintiff had paid all progress payments on the building agreement except the last two, for which however, the defendant had not made any demand. It had not done so, because it had not completed the erection of the house due, according to it, to some difficulty it had with its building contractor. The plaintiff wanted to have possession of the uncompleted house in order to complete it himself. He thereupon asked for specific performance of the sale agreement; in other words, he asked for an order of court that the land be transferred to his name.

The learned judge made an order in terms of the statement of claim because he held the view that the two agreements were distinct and severable and he declined to accept the defendant's contention that there was a triable issue or that there was a difficult question of construction involved. He also came to the view that there was no express provision in any of the two agreements which recite that the transfer of the title, after full consideration has been paid, shall still be subject to payment in full of the building agreement. The defendant admitted it could not complete the erection of the house because of the difficulty it found with its own building contractor though the plaintiff had been ready and willing to pay the last two instalments for the house.

Before us it was argued that the defendant had a good defence to this action on the merits or was otherwise entitled to defend in the same. In the first place it was argued that the learned judge was wrong in holding that the two agreements were distinct and severable. This would involve question of construction. In support certain provisions of the two agreements were drawn to our attention. Under clause 2 of the sale agreement it was provided that vacant possession of the said land shall be given to the purchaser after payment of all the instalments payable pursuant to the provisions of the said building agreement and the sale agreement. On the other hand the plaintiff maintained that there was nothing in the two agreements that restricted the transfer of the land to the plaintiff after full payment of the price of the land and clause 2 of the said agreement merely referred to vacant possession and not to title. It was therefore urged on behalf of the plaintiff that since the land had been fully paid for, the defendant was therefore a trustee for the plaintiff and in the absence of provisions in the agreement to the contrary, the vendor must transfer the land to the purchaser. On behalf of the defendant it was also urged that apart from the question of construction of the agreement there was also the question of frustration to be considered.

Order 14A which deals with summary judgment in an action for specific performance provides that the plaintiff may apply to the court or a judge for judgment by affidavit in which he verifies the cause of action and states his belief that there is no defence to the action and the court may thereupon give judgment unless the defendant satisfies that he has a good defence to the action on the merits or discloses the facts sufficient in the opinion of the court or a judge to entitle him to defend.

As a general rule where a defendant shows that he has a fair case for defence or reasonable grounds for setting up a defence or even a fair probability that he has a *bona fide* defence he ought to have been given leave to defend, (see *Saw* v. *Hakim*,[1] *Ironclad etc. Co.* v. *Gardner*[2]) but the discretion lies with the judge and the defendant must show such facts as might be deemed sufficient to entitle him to defend. In this case the defendant said that the two agreements are connected together by reason of the provisions of clause 2 of the sale agreement by which vacant possession of the said land shall only be given after payment of all instalments payable under the provisions of the two agreements. There is no mention of title in that clause, and one can appreciate the necessity of such provisions in order to protect the interest of the defendant but reading the provisions of the two contracts I cannot help coming to the conclusion that the building contract was made on the basis that the sale contract had been concluded. In the sale agreement the plaintiff as the purchaser has performed his side of the contract and has acquired a right *ad rem* which is also a right *in personam* which means that he had a right to the land as against the vendor personally and on registration a real right good against the world. (See *Bachan Singh* v. *Mahinder Kaur*[3]). It would be noticed that in the building contract the plaintiff was constantly referred to as the owner of the land. This in my view is another reason to say that the two agreements are distinct and severable. The defendant had admitted that the delay in the completion of the building was not due to the fault of the plaintiff but that of difficulties between itself and its own contractors and that also the plaintiff had been all along ready and willing to pay off the last two instalments for the house. In any case whatever question that could arise in this case would be only in reference to the building agreement. In the circumstances, the appeal must fail and the defendant has to pay the costs of this appeal.

Suffian F.J.: With respect, I agree that this appeal be dismissed.

As has been said, there are here two agreements involved. Taking the agreement for sale first, after reciting *inter alia* that the seller (defendant/appellant) has agreed with the buyer (plaintiff/respondent) to erect a dwelling house on the land concerned on the terms contained in the building agreement of the same date made between the same parties, the agreement for sale provides in clause 1 that the agreement for sale is subject to the building agreement and its terms and that the provisions of clause 4 of the building agreement shall be incorporated in the agreement for sale in respect of the instalments of the purchase price. Clause 4 of the building agreement provides for the rights and liabilities of the parties in case the buyer fails to pay the instalments as agreed of the purchase price of the land and the price of the house.

Clause 2 of the agreement for sale provides that vacant possession of the land shall be given to the buyer after payment of all instalments payable under

both agreements. That is all there is in the agreements as regards conveyance. There is not a word in them about title. The use of the words "vacant possession" rather than title is significant, because it is possible to give a buyer title without vacant possession.

It is a fact that all but two instalments payable under the two agreements have been paid, but the plaintiff has not paid the two instalments because the defendant company, having so far failed to complete the building within a reasonable time, has not asked him to do so, and it is a fact that all the purchase price of the land has been paid.

In these circumstances, can it be said that the company may refuse to convey the land to the plaintiff?

The plaintiff wanted to buy this land from the company and the company agreed to sell him that land for $30,000. The plaintiff has paid that price. In my judgment, the company becomes in equity a trustee for the plaintiff and the beneficial ownership passes to the plaintiff as soon as the purchase price has been paid. As was said by Jessel M. R. at page 506 in *Lysaght* v. *Edwards*:[4]

"It appears to me that the effect of a contract for sale has been settled for more than two centuries;... it is that the moment you have a valid contract for sale the vendor becomes in equity a trustee for the purchaser of the estate sold, and the beneficial ownership passes to the purchaser, the vendor having a right to the purchase money, a charge or lien on the estate for the security of that purchase price, and a right to retain possession of the estate until the purchase money is paid, in the absence of express contract as to the time of delivering possession."

The above principle applies also in jurisdictions where there is registration of titles. In *Haji Osman bin Abu Bakar* v. *Saiyed Noor bin Saiyed Mohamed*[5] X for valuable consideration executed a transfer of land; the transfer and the document of title were handed to the buyer. Before the transfer was presented for registration, X died and registration was refused. The buyer sued for specific performance. He lost in the High Court but won in the Court of Appeal where Thomson J. (as he then was) said at page 39:

"I would put the matter thus. If a purchaser agrees to buy a piece of land and pays the purchase price, then subject to the terms of the contract and in the absence of fraud, misrepresentation or mistake he is entitled to a good title to the land and to possession..."

Later he elaborated on this in *Bachan Singh* v. *Mahinder Kaur and Others*.[3] He said that we must in this country bear in mind throughout the distinction between rights *ad rem* or personal rights and rights *in rem* or real rights. He then continued at page 98:

"Where there is a valid binding contract for the sale of land, the purchaser, when he has performed his side of the contract, acquires a right *ad rem*, which is also a right *in personam*. In other words, he acquires a right to the land as against the vendor personally but not good against the world as a whole and, in due course, that right can become a real right good against the world as a whole on registration in accordance with the Land Code..."

It is a matter of common right that in the circumstances of this case the plaintiff should get a conveyance. If the company had intended to exclude him from that right, it should have expressed itself in clear and unambiguous terms, for as was said by the learned Vice-Chancellor in *Symons* v. *James*:[6]

"If a vendor means to exclude a purchaser from that which is a matter of common right, he is bound to express himself in terms the most clear and unambiguous. And if there be any chance of reasonable doubt, or reasonable misapprehension of his meaning, I think that the construction must be that which is rather favourable to the purchaser than to the vendor."

It "is a general rule that the words in a deed are to be construed most strongly *contra proferentum*": so said Lord Kenyon C. J. in 1800 in *Barrett* v. *The Duke of Bedford*.[7] Twenty-seven years later, Holroyd J. said this at page 512 in *Edis* v. *Bury*:[8]

"... if there be any ambiguity in the words of [an] instrument, they ought to be construed favourably for the plaintiff, and against the defendant who made the instrument."

In these circumstances I am of the opinion that on the admitted facts there is no triable issue and the learned judge was right in granting the plaintiff leave to sign judgment.

The appeal is accordingly dismissed with costs.

This is not the first time that a buyer of property has got himself into a tangle because of the conduct of a developer and it is a good thing that the Government has brought into force the law to protect property buyers who often risk their entire life saving.

Ali F.J.: The main question in this appeal is whether the appellants should be given leave to defend an action in which the respondent is claiming specific performance and damages for breach of contract.

By a written agreement dated 14th May, 1966, the respondent agreed to buy and the appellants to sell a piece of land described as Lot No. 5 in Town Subdivision 2 in the North East District of Penang, consisting of an area of about 14,600 square feet. The agreed purchase price for the land is $30,000. This agreement is expressly stated to be subject to the execution of another agreement by the parties described as the building agreement and also subject to the terms thereof. The building agreement was in fact executed about almost at the same time as the sale agreement and in it the appellants agreed to erect on the lot mentioned in the sale agreement a dwelling house for the sum of $49,000, payable in accordance with the schedule attached or enclosed to the agreement. It is common ground that the respondent has paid full purchase price for the land and a substantial part of the amount required to be paid under the building agreement. There is a balance of $18,000. The respondent, at all material times, was ready and willing to pay this balance but has not done so because the appellants have not completed the house. Whatever may be the reason for the appellants' inability to complete the house, there is every reason to think that in the circumstances of this case the respondent, having performed his part under the two agreements, is justified in thinking that he is not getting a fair bargain out of the transactions. While that may be the position, I think, we are bound to take notice that the rights and liabilities of the parties in this case are clearly governed by the written agreement or agreements.

In January, 1969, more than two years after the date of the agreements, the respondent wrote to the

appellants asking for a conveyance of the land. The appellants' reply was to the effect that the respondent was not entitled for conveyance as "the sale of the land is subject to the terms of the building agreement" which terms have not been fully complied with. In February, 1969 the respondent commenced action claiming not for the return of the money paid but for specific performance and damages for breach of contract. The writ issued being a specially indorsed writ the respondent, five days after its issue, applied under Order 14A for leave to sign final judgment only in respect of the claim for specific performance. The appellants resisted the application and in the affidavit filed on their behalf showing cause it is set out at length the circumstances in which the two agreements came to be executed and the reasons for the appellants' inability to complete the house. The affidavit particularly refers to clause 1 of the sale agreement and clause 9 of the building agreement which, the appellants contend, provide valid and reasonable grounds for resisting specific performance.

On the affidavits and on the arguments submitted by counsel, the learned judge came to the conclusion that the respondent should be given leave to sign final judgment. Against that order the appellants are now appealing to this court.

In his judgment the learned judge said:

"...I am in agreement with plaintiff's counsel that the two agreements are distinct and severable and I do not accept defence contention that there is a triable issue or that there is a difficult question of construction involved..."

In this appeal the appellants maintain that the learned judge erred in holding (a) that there is no triable issue, and (b) that the two agreements are distinct and severable.

Before adverting to the arguments in this appeal I shall refer briefly to the principle which governs matters of this nature.

The principle governing the exercise of power under Order 14 applies equally to Order 14A and as stated by Lord Chancellor in *Jacobs* v. *Booths Distillery*[9] is in these terms: —

"...People do not seem to understand that the effect of Order XIV is, that, upon the allegation of the one side or the other, a man is not to be permitted to defend himself in a court; that his rights are not to be litigated at all. There are some things too plain for argument; and where there were pleas put in simply for the purpose of delay, which only added to the expense, and where it was not in aid of justice that such things should continue, Order XIV was intended to put an end to that state of things, and to prevent sham defences from defeating the rights of parties by delay, and at the same time causing great loss to plaintiffs who were endeavouring to enforce their rights. But I am bound to say that it startles me to think that in a case of this sort an order should be made the effect of which is that the defendant is not to be heard to make his defence..."

Agreeing with this, Lord James added: —

"It is not for that tribunal to enter into the merits of the case at all. It ought to make the order only when it can say to the person who opposes the order, 'You have no defence. You could not by general demurrer, if it were a point of law, raise a defence here. We think it impossible for you to go before any tribunal to determine the question of fact.' We are not expressing any opinion whatever upon the merits of the case. It appears to me that there is a fair issue to be tried. On which side the chances of success are it is not for this House to determine; but thinking, as I do, that there is a fair issue to be tried by a competent tribunal, it seems to me to be perfectly clear that the order of the Court of Appeal ought to be reversed."

This case has been cited with approval on more than one occasion by this court and suffice it for me to say that it must also apply to this case. While the principle so enunciated is clear enough to be understood the difficulty, more often than not, lies in its application to the particular circumstances of each case. Here the appellants have maintained that there is a triable issue. This is putting it in very general terms. But as I understand it from the appellants' affidavit and from the written submission the issue to be tried so far as the appellants are concerned is whether or not the respondent is entitled to a conveyance of the land before the house is completed and before full payment thereof has been made. The question for this court is not whether such an issue has merits but whether it is an issue which can fairly be raised by the appellants having regard to the terms of each of the two agreements. In this connection, it must be pointed out that the sale agreement by itself does not expressly provide the time when the land is to be conveyed to the respondent. Clause 2 thereof which is referred to by the learned judge in his judgment merely speaks of "vacant possession", which in my view is not the same thing as "title" to the land. I find it necessary to mention this because in considering whether there is a triable issue, it is necessary to refer not only to the defendants' affidavit but also to ascertain from the plaintiff's pleading the cause of action as verified by his affidavit in support of the application for summary judgment. If it is manifestly clear from the sale agreement that the respondent has an unassailable case for specific performance it can be certain that the appellants would find it extremely difficult to contend, as they are now contending, that he is not entitled to a conveyance of the land. Unfortunately, in this case the sale agreement is not all that clear as to provide a firm basis to support the claim for specific performance. Clause 1 of the sale agreement provides:

"1. Subject to the due execution by the vendor and the purchaser of the said building agreement and the terms thereof and subject also to the covenants and conditions hereinafter contained or referred to the vendor will sell and the purchaser will purchase the said Lot described in the schedule hereto free from encumbrances at the price of $30,000 payable to the vendor by the instalments and at the times as follows:—

(a) $10,000 on the signing hereof.

(b) $ 7,500 not later than one month from the date hereof.

(c) $ 7,500 not later than two months from the date hereof.

The provisions of clause 4 of the said building agreement shall be deemed to be incorporated herein in respect of the foregoing instalments."

The difficulty of ascertaining whether the respondent could obtain the transfer of title in respect of the land before the house is completed is manifested by the necessity on the part of the learned judge to refer to clause 2 of the building agreement, the terms of which his Lordship said contemplates that there could be a transfer of title. The terms of the sale agreement and in particular clause 1 thereof provide grounds for the appellants to contend that until the terms of the build-

ing agreement have been fully complied with, that is to say, until the house is completed and full payment made the respondent is not entitled to a conveyance of the land. Whether such a contention can successfully be maintained against the respondent is, of course, for the trial court to decide but for the purpose of this appeal it is only necessary to consider whether the contention is a valid and reasonable contention. I have no doubt that it is and in this context I respectfully disagree with the learned judge's finding that there is no triable issue which can fairly be determined.

Another question involved in this appeal is whether or not the two agreements are distinct and severable. The learned judge has held that they are. This question, in my opinion, is plainly a question of construction to enable the court to conclude whether or not the respondent is in a position to enforce the sale agreement alone. In holding that the two agreements are distinct and severable, the learned judge is in effect deciding on the merits of the respondent's case. This, as pointed out, by Lord James in *Jacobs* v. *Booth's Distillery Company, supra*, the court should not do at this stage of the proceedings. The question for consideration ought to have been whether having regard to the terms of the two agreements there is a reasonable ground for the appellants to contend that they are not distinct and severable. That is all that is to be considered for the purpose of Order 14A. In this case it is not in dispute that the appellants, as a land development company, have embarked upon a scheme to develop their land into a housing estate. The preamble to the sale agreement expressly states that the land is to be subdivided into several lots for building purposes. A customer wishing to own one of these lots is required to enter into an agreement in respect of the land and also into an agreement in respect of the house which the appellants undertook to build. Whether the customer can only enter into a sale agreement for the purchase of the land without at the same time entering into an agreement for the building of the house is not clear from the affidavits but the language of clause 1 of the sale agreement provides reasonable ground for the view that it is not the intention to sell only the land. The reason for the requirement that the customer should also enter into the building agreement might very well be that in embarking upon this scheme the appellants have taken into account the profits which they hope to make from each transaction. I am not here saying that such is the view to be taken of clause 1 for that is a conclusion to be arrived at by the trial court. I am only saying that there is a reasonable ground for such a view and in that context again there is a fair question of construction involved. This is to say whether or not the two agreements are distinct and severable is plainly a question of construction to be determined by the trial court having regard to the terms of the two agreements read together. On this question also I respectfully disagree with the learned judge's finding.

In the event, for the reasons already stated I am of the view that the appellants should be given unconditional leave to defend and this appeal should, therefore, be allowed with costs. The costs of the application in the court below shall be costs in the cause.

Appeal dismissed.

Solicitors: *Allen & Gledhill; Skrine & Co.*

KOH LAN ENG & ANOR. v. TEE CHOON YONG

[O.C.J. (Winslow J.) October 31, 1969]

[*Singapore — Suit No. 44 of 1969*]

Landlord and Tenant — Lease — Option to renew whether exercised — Breach of tenant's covenant not to assign, underlet, sublet or part with possession — Failure to obtain approval of authority for unauthorised buildings — Contributory failure by landlord not signing plans to be submitted for approval — Strange behaviour of defendant — Authorising brother to sign warrant to solicitor to act in defendant's name — Order of court of 1967 not taken out before previous judge's retirement — Costs — How affected.

The plaintiffs' claim was for possession of land and premises, of which the defendant was tenant under a lease dated February 2, 1963 as shown in a plan annexed to that lease, to be used as a sawmill, for a period of three years from August 1, 1962 at a monthly rent of $275 payable in advance. The defendant was also given an option to renew at intervals of three years, for a total period of not more than nine years in all, at the same rent. Possession was claimed on the ground that the lease expired on July 31, 1965 when the defendant failed to exercise his option to renew.

Further, it was claimed that, even if the option to renew had in fact been exercised, it became defeated by the defendant's breach of two covenants — (iv) and (ix) — contained in the lease. By covenant (iv) the defendant undertook not to assign, or underlet or part with the possession of the demised land and premises or any part thereof without the consent in writing of the landlords first had and obtained. By covenant (ix) the defendant undertook either to submit plans for the approval of the proper authorities regarding certain unauthorised buildings or sheds already erected on the said land or to demolish same if such approval was not granted.

Held: (1) the plaintiffs were entitled to possession of the said premises not only because of failure on the part of the defendant to adduce satisfactory evidence of the exercise of the option to renew in July 1965 but also because the defendant had been in breach of covenant (iv) though not of covenant (ix);

(2) the defendant was a complete ignoramus as to the affairs of the sawmill, Sing Ling Sawmill & Company, at all times since the commencement of the lease and he had left the conduct of the affairs of this sawmill entirely in the hands of his younger brother who was one of the registered partners of Sing Ling Sawmill & Company at the relevant time;

(3) although the defendant was described in the aforesaid lease as a person trading as Sing Ling Sawmill & Company, he was never trading as such when the company was first registered in October, 1962. The partners of this business then were the defendant's younger brother and two others;

(4) with regard to breach of covenant (iv), it was highly doubtful whether the defendant was ever in possession of the demised land because after signing the lease in February 1963 he faded out of the picture leaving his brother in charge. In fact he parted with possession even before going into it. He gave his brother possession right from the start. He was merely a nominal tenant. Furthermore, there was ample evidence to show that a number of other businesses were subsequently commenced and conducted on the land and it was clear that whoever had been in charge of the land had clearly assigned, underlet, sublet or parted with possession of various parts of the said land;